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JAMES C. WILSON
300 N. PRESOTT AVENUE
CLEARWATER FL 33755

MAILED

MAR 06 2009

OFFICE OF PETITIONS

In re Application of :
Wilson :
Application No. 10/550,944 : DECISION
Filed: 28 September, 2005 :
Attorney Docket No. T3987-10161US01 :

This is a decision on the petition, filed on 24 December, 2008, for revival of an application abandoned due to unavoidable delay under 37 C.F.R. §1.137(a).

The petition under 37 C.F.R. §1.137(a) is **DISMISSED**.

Any further petition to revive must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.137(a)."

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

Petitioner's alternative is to file a complete and fully executed petition (with properly executed supporting statements where necessary) 37 C.F.R. §1.137(b), discussed below.

As to Allegation of
Unavoidable Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(a) are the petition and fee therefor, a reply, a proper showing of unavoidable delay under the regulation, and, where applicable, a terminal disclaimer and fee. (However, it does not appear that a terminal disclaimer and fee are due here.)

Petitioner does not appear to have satisfied the reply and showing requirements as to unavoidable delay (see: MPEP §711.03(c)). Petitioner indeed submitted an amendment on 5 September, 2008—averred to have been submitted via FAX on 14 April, 2008—that carried

the wrong application number (to wit: 10/550,994 rather than 10/550,944), however, far more problematic is that Petitioner failed to file a proper reply to a final Office action.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the final Office action (copy enclosed) mailed on 16 January, 2008, with reply due absent extension of time on or before 16 April, 2008.

The application went abandoned after midnight 16 April, 2008.

The Office mailed the Notice of Abandonment on 21 August, 2008.

On 5 September, 2008, Petitioner submitted an after-final amendment—averred to have been submitted via FAX on 14 April, 2008—that carried the wrong application number (to wit: 10/550,994 rather than 10/550,944). As Petitioner is or should be aware, an after-final amendment is not as of right and not a proper reply¹ if it does not *prima facie* place the application in condition for allowance. The application having already gone abandoned and the period of reply having passed the maximum statutory period, the Office took no further action in this regard. (Because Petitioner appears to prosecuting the application *pro se*, it is noted that for the amendment to be considered by the Examiner, Petitioner must submit with the petition and fee a proper reply, which in this case includes a request for continued examination (RCE) and fee and a submission under the provisions of 37 C.F.R. §1.114 in the form of an amendment.)

It appears that Petitioner's only vehicle for revival of the application is a grantable petition pursuant to 37 C.F.R. §1.137(b), averring unintentional delay, the requirements for which are the petition and fee therefor, a reply, a proper statement/showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee. (However, it does not appear that a terminal disclaimer and fee are due here.)

Decisions on reviving abandoned applications on the basis of “unavoidable” delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word ‘unavoidable’ . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other

¹ A proper reply is an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal, or an RCE (with fee and submission under 37 C.F.R. §1.114). (See: MPEP §711.03(c).)

means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.²

Thus, Petitioner has failed to support the allegation of unavoidable delay.

Out of an abundance of caution, Applicants always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.³

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

As to Allegations of Unavoidable Delay

The requirements under 37 C.F.R. §1.137(a) have not been satisfied as of this writing in that Petitioner failed to make the showing of unavoidable delay and provide a reply to the Office action as required.

CONCLUSION

Accordingly, The petition under 37 C.F.R. §1.137(a) is **dismissed**.

ALTERNATIVE VENUE

Should Applicants/Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to

² In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

³ See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Applicant's duty of candor and good faith and accepting a statement made by Applicant. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

unintentional delay under 37 C.F.R. §1.137(b). (See:
http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.) Petitioner should also refer to the Fee Schedule also online to determine the appropriate fees at the time of any given proposed transaction.

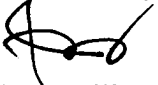
Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By facsimile: (571) 273-8300
 Attn: Office of Petitions

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2⁴) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).


/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

⁴ The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of Petitioners or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,944	09/28/2005	James C. Wilson	T3987-10161US01	4048
7590 JAMES C. WILSON 300 N. PRESOTT AVENUE CLEARWATER, FL 33755			EXAMINER ISLAM, SYED A	
			ART UNIT 3611	PAPER NUMBER
			MAIL DATE 01/16/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/550,944

Applicant(s)

WILSON, JAMES C.

Examiner

Syed A. Islam

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kent (2,982,041) in view of Friedrich et al. (6,938,771).

Regarding claim 1, Kent discloses that a key label comprising: a substantially cylindrical sleeve 10 (col. 2, line 3; see fig. 2) having an inner surface and an outer surface and a circumference, the inner surface of the substantially cylindrical sleeve having a through opening (see fig. 2) adapted to slip over a key head such that it fits around a head end of a key forming a flat surface that can be written upon..

However, Kent fails to disclose the substantially cylindrical sleeve formed of a colored heat shrink material the substantially cylindrical sleeve to be heat shrunk to substantially encase the head end of the key. Instead, Friedrich et al. disclose the substantially cylindrical sleeve formed of a colored (col. 5, line 65) heat shrink material the substantially cylindrical sleeve to be heat shrunk to substantially encase (col. 5, line 40) the head end of the key. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use the teaching of Friedrich et al. in the invention of Kent because it is secure, permanent and inexpensive to manufacture.

However, Kent fails to disclose the length of the sleeve being less than one half of the circumference of the sleeve. Instead, Kent discloses the label is provided in corresponding shapes configured and sized to accommodate the key head. Moreover, Kent

discloses many modifications and changes may be made without departing from the scope of the invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to make the length of the sleeve being less than one half of the circumference for the purpose of accommodating a proper sized substance.

Regarding claim 2, Kent discloses the label forming a flat surface that can be written upon, but Kent fails to disclose when the substantially cylindrical sleeve is shrunk to fit around the head end of the key upon being heated to a predetermined temperature, the inner surface of the substantially cylindrical sleeve at least partially contacting a portion of the head end of the key after shrinking, forming a flat surface that can be written upon. Friedrich et al. disclose when the substantially cylindrical sleeve is shrunk to fit around the head end of the key upon being heated to a predetermined temperature (col. 9, line 28), the inner surface 10 of the substantially cylindrical sleeve at least partially contacting a portion 4 (col. 8, line 19; see fig. 1) of the head end of the key after shrinking. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use the teaching of Friedrich et al. in the invention of Kent because it is secure, permanent and inexpensive to manufacture.

However, Kent fails to disclose the length being between about 1/8 inch and 1 inch. . Instead, Kent discloses the labels are provided in corresponding shapes configured and sized to accommodate a key. Moreover, Kent discloses many modifications and changes may be made without departing from the scope of the invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to make the length of the sleeve being less than one half of the circumference for the purpose of accommodating a proper sized substance.

Regarding claim 3, Kent discloses that the outer surface of the substantially cylindrical sleeve provides a flat writeable surface for application of an identifying mark to be applied (see fig. 2).

Regarding claim 4, Kent discloses that the substantially cylindrical sleeve, when shrunk covers only the head end of the key or the opening means (see fig. 2).

Regarding claim 5, Kent fails to disclose that the heat shrink material comprises one of polyolefin, polyvinyl chloride, polytetrafluoroethylene (Teflon) and polychloroprene (Neoprene). However, Friedrich et al. disclose the heat shrink material comprises one of polyolefin, polyvinyl chloride (col. 8, line 46; see fig. 3), polytetrafluoroethylene (Teflon) and polychloroprene (Neoprene). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use the teaching of Friedrich et al. in the invention of Kent because it is inexpensive to manufacture.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Friedrich et al. in view of Kent.

Regarding claim 12, Friedrich et al. disclose a method of manufacturing a colored heat shrink label for application to a key head, the method comprising: providing a colored heat shrink material having a substantially cylindrical shape 6 with a predetermined diameter and circumference and length; and cutting (col. 6, lines 30-33) the substantially cylindrically shaped colored heat shrink material into sleeves of a predetermined width, each sleeve having an opening therethrough, applying one of the sleeves over a container and heat shrinking the sleeve.

However, Friedrich et al. fail to disclose applying one of the sleeves over a key head. Instead, Kent discloses applying one of the sleeves over a key head. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use the teaching of Kent in the invention of Friedrich et al. because it is simple and inexpensive.

However, Friedrich et al. fail to disclose the length of the sleeve being less than one half of the circumference of the sleeve. Instead, Friedrich et al. disclose the film wrappings are provided in corresponding shapes configured and sized to accommodate a container (see col. 5, lines 25-30). Moreover, Friedrich et al. disclose many modifications and changes may be made without departing from the scope of the invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to make the length of the sleeve being less than one half of the circumference for the purpose of accommodating a proper sized substance.

Allowable Subject Matter

Claim 16 is allowed.

The following is an examiner's statement of reasons for allowance:

There are many similarities between applicant's invention of and the US patent of Kent and Friedrich et al. However, Kent and Friedrich et al. fail to disclose a lock label including a second substantially cylindrical sleeve of a colored heat shrink material having a second predetermined diameter, a second predetermined length, an inner surface and an outer surface and a through opening such that the inner surface of the lock label is adapted to fit around a portion of a lock and be shrunk to substantially encase the portion of the lock forming a flat surface that can be written upon. None of the prior art in the record whether taken alone or in combination can solve this dissimilarities.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Syed A. Islam whose telephone number is (571) 272-7768. The examiner can normally be reached on Monday-Friday 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D. Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:
10/550,944
Art Unit: 3611

Page 7

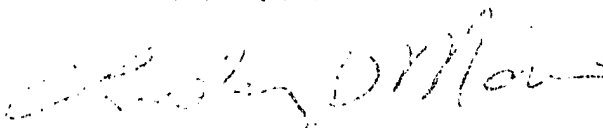
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lesley D. Morris
SPE
Art Unit 3611

SI
December 14, 2007


LESLEY D. MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

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December 14, 2007


LESLEY D. MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600



UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,944	09/28/2005	James C. Wilson	T3987-10161US01	4048

EXAMINER	
ISLAM, SYED A	

ART UNIT	PAPER NUMBER
3611	

MAIL DATE	DELIVERY MODE
08/21/2008	PAPER

⁷⁵⁹⁰
JAMES C. WILSON
300 N. PRESOTT AVENUE
CLEARWATER, FL 33755

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of Abandonment

Application No.

10/550,944

Examiner

SYED A. ISLAM

Applicant(s)

WILSON, JAMES C.

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 16 January 2008.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

/Joanne Silbermann/
Primary Examiner, Art Unit 3611

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.